

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 90-571
Telecommunications Relay Services and)	
Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech)	
Disabilities)	CG Docket No. 03-123
)	

COMMENTS

SORENSEN MEDIA, INC.

Pat Nola
Chief Operating Officer
4393 South Riverboat Road
Suite 300
Salt Lake City, Utah 84123

Of Counsel:

J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
October 18, 2004

SUMMARY

This proceeding addresses a range of significant issues for VRS. Sorenson, the leading provider of VRS, supports swift action by the Commission to ensure that VRS can continue to grow and provide a valuable service to Deaf consumers across the country.

The most important step the Commission can take is to ensure that VRS continues to be reimbursed from the interstate fund. It is unrealistic to expect that states will certify multiple VRS vendors and, as a consequence, a decision to move VRS to state jurisdiction would eliminate the current healthy competition among VRS providers. This would stifle the growth of VRS and prevent new service providers from entering the field, and would be inconsistent with the Commission's own conclusion that VRS competition is the best way to ensure innovation, low cost and good customer service. Moreover, Sorenson is unaware of any current mechanism that would permit accurate, automatic allocation of calls made through the Internet to specific states, so cost allocation in a state-focused regime would be extremely difficult.

Sorenson supports continuation of the current per-minute reimbursement model. However, the Commission should set rates once every two years and should shift from a rate of return calculation best suited to a capital-intensive business to a profit margin calculation that is more consistent with the way that VRS is offered. To prevent abuse, the Commission should require detailed call audit reports on an annual basis, or more frequently if deemed appropriate by the Commission or NECA.

The Commission should not adopt speed of answer requirements because doing so only will exacerbate the current shortage of qualified interpreters and affect non-VRS users of interpretive services. In this context, the Commission should recognize that the ADA's functional equivalency goals have to be balanced against the requirement that Deaf individuals

be given access to TRS. In practice, demanding that VRS providers meet speed of access requirements will force them to reduce the number of users they serve, reducing access to this important service. For similar reasons, Sorenson does not believe the Commission should mandate 24 x 7 service at this time.

In the long run, VRS should be a mandatory service. At this time, it can be a mandatory service only if the Commission leaves all current waivers in place, extends the current speed of answer waivers and does not set specific speed of answer requirements until more information becomes available on what is feasible. It also is critical that VRS continue to be reimbursed from the interstate fund if it is made a mandatory service.

The Commission also should address other issues in this proceeding. It should clarify the rights of VRS providers and interpreters when faced with abusive and obscene callers and should delineate specific limits on the obligations of providers and interpreters when calls concern potentially illegal activity. The Commission should permit interpreters to leave a call in less than ten minutes when circumstances warrant and to ask questions during call set-up that will facilitate interpreting the call. Sorenson also supports a certification process for new providers to ensure that they will be competent and viable. Finally, the Commission should reform the membership of the TRS Advisory Council to include members representing each type of TRS, so as to ensure that newer forms of service are accounted for properly.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. VRS Cost Recovery Method.....	2
II. Reimbursement from FCC for Interstate and Intrastate VRS.....	5
III. Cost Recovery Allocation Method For Appropriating VRS/IP Relay Costs By State.....	7
IV. Improved TRS Measures	8
A. Speed of Answer	8
B. 24 x 7 Service.....	11
V. VRS Rate Calculation Method.....	12
VI. Two Year VRS Rate Period.....	14
VII. VRS as a Mandatory TRS Service.....	14
VIII. Abuse Issues of CAs by TRS Users.....	15
A. Pornographic and Abusive Callers.....	15
B. Illegal Calls	16
IX. Other VRS Issues.....	18
A. VRS CA to remain on the line for 10 minutes.....	18
B. Permitting Interpreters to Ask Questions During Call Set-up	18
C. Certification and Oversight of VRS Providers	18
X. TRS Advisory Council.....	21
XI. Conclusion	22

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 90-571
Telecommunications Relay Services and)	
Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech)	
Disabilities)	CG Docket No. 03-123
)	

COMMENTS

Sorenson Media, Inc. (“Sorenson”) hereby submits its comments in response to the Further Notice of Proposed Rulemaking in the above-referenced proceeding.¹

Sorenson is the largest video relay service (“VRS”) provider in the country in terms of conversation minutes conducted on a monthly basis. In fact in 2004, Sorenson VRS has provided interpretation for over half of the minutes submitted to the VRS fund. Sorenson developed and brought the first consumer Internet videophone to the Deaf community, which has been met with an enthusiastic response and offered a dramatic improvement in the video quality and ability for deaf users to converse naturally at full conversation speed with clear finger spelling and capturing of subtle gestures and expressions.

There are many VRS choices for consumers and they can elect the service that offers them the most compelling experience. Sorenson would not be in this position today without the foresight of the FCC in deciding that fostering a new growth area of communication for the Deaf requires direct funding for both interstate and intrastate VRS service from a single national source. Without a permanent change in funding policy (i.e. national funding for interstate and

¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 12475 (2004) (the “Notice”).

intrastate) the Deaf community will have only a few legacy service providers offering VRS, which would limit consumer choice and impede innovation.

I. VRS Cost Recovery Method

The FCC seeks further comment on the cost recovery method for VRS. For the reasons described below, VRS costs should be recovered on a per minute basis based on conversation minutes.

There are substantial upfront costs to becoming a VRS provider that are not directly recoverable from the cost per minute method. Vendors should have the incentive to make a long term financial commitment in developing new technology and developing adequate capacity to improve the quality and capabilities of Internet-based relay services (either VRS or IP relay). A long term commitment is possible only if providers can recover reasonable development costs and have confidence that the FCC will not arbitrarily change the rate against NECA recommendations based on consistent cost recovery methodology.

For example, if the new VRS rate NECA recommended was \$7.29 and the FCC used a historic analysis to mandate the rate at \$3.02, then providers could never cover their investment – regardless of how efficiently they operated – because the rates would be well below what is necessary to cover actual costs. Moreover, if the rates set for VRS are not consistent with a specific methodology that is well understood and practical, then no vendor will have incentive to remain in the business for the long term. Sorenson will comment later in this document on the return on investment method the FCC uses; suffice it to say that this method needs to change to be fair and practical for VRS providers.

At the same time, a flat monthly compensation plan does not provide incentive to offer greater access to the service or improve quality and service since vendor profit is not tied to

improving efficiency and scale. Under a flat compensation plan, profits actually increase if the vendor provides fewer minutes of service.

Compensation methods that focus on return on capital also raise significant issues. The expenses for qualified interpreters, marketing and development will far exceed the capital investment for VRS. Even the costs for the Internet infrastructure can be outsourced to an ISP or the provider can lease high speed DS3 lines and their network equipment and be able to offer an effective VRS service. With today's technology it is not necessary and sometimes not even effective to acquire the infrastructure as a capital investment versus outsourcing and leasing the items. A provider can easily have over \$10 million in ongoing annual Internet network infrastructure expenses but only \$100,000 as true capital investment. Using return on capital investment as the margin amount added to allowable reimbursement costs does not adequately compensate vendors based on today's new technology and the associated new business service models, and therefore creates incentives for inefficient capital allocation decisions. Consequently, limiting the potential return to a percentage of capital expenditures would act as a deterrent rather than an enticement to potential new, non exchange carrier providers.

There always will be a tension between the rates the provider's desire and the rates that NECA/FCC grants (what's reasonable, affordable and realistic within funding constraints) but the system should be flexible enough to encompass changing technology and reflect those changes in rules to create an effective framework for offering a fair compensation for a valuable service.

Safeguards to protect the per minute compensation method should include detailed call audit reports on an annual basis or as NECA/FCC deems necessary for all calls that are submitted for payment. The detailed audit report should cover a duration of time specified by

NECA/FCC, up to the entire period since the last detailed audit report. The detailed audit report should include:

- **Call Record ID:** Unique identifier for the record when the first call is initiated. A call record can contain multiple individual calls that the initiator makes in a single session. Individual calls are recorded in the sequence number.
- **Sequence Number:** A separate listing for each call made in the call record.
- **Interpreter ID:** The interpreter number of the interpreter (Call Assistant) who interpreted the call.
- **Hearing Phone #:** The phone number of the hearing person in the call.
- **Videophone # or IP Address of Deaf User:** The phone number of the videophone that the deaf caller uses or the IP address of the device the deaf caller establishes a video connection to the interpreter at a VRS Call Center.
- **Session Start:** The beginning of the session time (when the first party is connected to the interpreter) for the sequence number entry of the call record. The entry should include the date and time stamp rounded to the nearest 1/100 of a second.
- **Conversation Start:** The beginning of the conversation time (both parties are connected to the interpreter) for the sequence number entry of the call record. The entry should include the date and time stamp rounded to the nearest 1/100 of a second.
- **Conversation End:** The end of the conversation time (both parties are connected to the interpreter) for the sequence number entry of the call record. The entry should include the date and time stamp rounded to the nearest 1/100 of a second.
- **Session End:** The end of the session time (when the last party is disconnected from the interpreter or when the conversation for the next call in the Call Record begins) for the sequence number entry of the call record. The entry should include the date and time stamp rounded to the nearest 1/100 of a second.
- **Session Minutes:** The total duration of the session time (at least one party is connected to the interpreter) for the sequence number entry of the call record. The entry should indicate the number of minutes and seconds rounded to the nearest 1/10 of a second.
- **Conversation Minutes:** The total duration of the conversation time (both parties are connected to the interpreter) for the sequence number entry of the call record. The entry should indicate the number of minutes and seconds rounded to the nearest 1/10 of a second.

II. Reimbursement from FCC for Interstate and Intrastate VRS

Sorenson views this issue as the most important topic under consideration because it will affect the ability of Deaf consumers to have the greatest choice of providers, the highest quality of service, and the greatest access to ADA-mandated equivalent phone service for the deaf and hard-of-hearing.² These are central issues for the Deaf community and VRS vendors.

Sorenson agrees with TDI's comment that requiring each IP/VRS provider to secure approval in every state is unrealistic.³ Sorenson has approached over a dozen state TRS departments on this issue and with very few exceptions the states select a single TRS provider to reduce administrative burden on the state. Many states have laws that dictate selection of a single TRS vendor. From this analysis – and as the Commission admits – it is not apparent that states can be forced to select multiple vendors or divide up the state contracts to offer Internet based services (VRS or IP relay) to one vendor and TTY relay services to another vendor. Sorenson would not be conducting VRS service today if the FCC did not have the foresight to realize that new technologies and better service often come from new entrants.

Ed Bosson, the NASRA Chairman and Texas TRS Administrator summarized the key issues in his presentation at the Commission's Solution Summit on May 7.⁴ As Mr. Bosson explained:

- Demand is moving from traditional deaf services over phone lines to new services like VRS and IP Relay over the Internet.
- VRS provides the most natural form of relay for deaf-to-hearing communication (of any relay service).
- Ensuring the broadest competition and lowest cost requires the FCC to nationally administer VRS. The vast majority of states will not offer multi-vendor TRS

² 47 U.S.C. § 225(b)(1).

³ Notice, 19 FCC Rcd at 12492 (discussing IP Relay).

⁴ Mr. Bosson was instrumental in pioneering VRS in Texas and much of the information from the VRS program in Texas was used by the government to create their current national VRS program.

(VRS) contracts – they have not in the past and they will not in the future. This avoids sole source contracts issued by states, which eliminate competition and limits choice for consumers. Small population states that produce a small number of VRS minutes would drive the price of the VRS fund significantly higher if the local VRS vendor cannot amortize the costs of service nationally by serving larger population states.

- Functional equivalency is the agreed goal, but should be based on business realities to deliver the service.

Requiring providers to obtain recognition in every state where they offer service would effectively prohibit new vendors like Sorenson from offering service. If this had been the Commission's policy from the beginning, it would have denied the Deaf community access to the first consumer IP videophone, Sorenson's VP-100. The VP-100 is an exceptional communication tool that has dramatically improved deaf-to-hearing communication. The individual state monopoly system that would result if the Commission allows state administration of VRS would be highly unlikely to foster the innovation that will be necessary to develop the next generation of VRS videophones and services and would be in conflict with the mandate of Congress that the Commission not discourage the development of improved technology.⁵

In addition, Sorenson (which is not a wireline or wireless telephone company) has demonstrated that non-telephone companies can successfully offer VRS service. Sorenson's dramatic growth and market acceptance should be an excellent indication that customers are willing to select this service over those of other competing providers.

The Commission has stated that VRS competition is the best way to ensure innovation, low cost, and a commitment to customer service. If there is abundant competition and multi-vendor choices for VRS customers, then consumers are free to take their business to another vendor to get better service if they are dissatisfied. All providers and the Commission share the

⁵ 47 U.S.C. § 225(d)(2).

same goal of ensuring the highest quality communications experience for the Deaf and Hearing Communities.

Finally, on October 5, the Commission received a letter from Congressman Pickering, Vice Chairman of the House Commerce Committee, and 61 other members of Congress describing the reasons that the Commission would be “on very firm ground to” determine that Voice or IP services are interstate in nature. These same conclusions apply with equal force to any IP-based service, including IP relay and VRS, and provide a further basis for the Commission to keep VRS in the interstate jurisdiction.

III. Cost Recovery Allocation Method For Appropriating VRS/IP Relay Costs By State

Sorenson is unaware of any current technology that can ensure the automatic geographic location of all calls initiated through the Internet other than by user registration or manual confirmation of their location (state) during the call set-up of each call. Sorenson does not believe that an artificial state allocation method is necessary since the only effective method is to have the FCC/NECA reimburse for both intrastate and interstate VRS minutes. Allocating by state for the purpose of having the states reimburse for intrastate minutes would require Sorenson (or other vendors) win sole sourced state contracts in every state. As described above, this is unrealistic and unreasonably protects incumbent providers.⁶

While there may be mechanisms to identify the geographic locations of calls (including geo-identification certification methods), Sorenson submits that developing such mechanisms would be an inappropriate use of resources that would be better directed to improving service to the Deaf community. Addressing the issues raised by requiring location identification, such as making identification certificates effective behind proxies, would be time-consuming and expensive. Moreover, because these mechanisms would be necessary only to the extent that the

⁶ See *supra* Part II.

Commission determined that reimbursement should be subject to state control, the difficulty of implementing geographic identification provides another reason for the Commission to avoid state involvement in reimbursement.

IV. Improved TRS Measures

A. Speed of Answer

Sorenson fully supports the FCC's conclusion that "VRS is a highly competitive service, and that providers who do not provide prompt and efficient service will run the risk that customers will go elsewhere."⁷ This conclusion should inform the Commission's analysis of speed of answer issues.

There is a fundamental difference in labor pools between text relay (both IP and TTY) and VRS. Trained typists are much more readily available for text relay versus VRS, which depends on a very limited supply of qualified interpreters. Although not mandated Sorenson uses certified interpreters to improve the quality of service. In fact, currently there are only 4,900 certified interpreters (NAD/RID) in the country. There are seven VRS providers competing to hire as many of the certified interpreters as possible; and there are myriad other interpreting tasks that require interpreters of an equally high skill level. In other words, the country already is experiencing a national shortage of qualified interpreters. Mandating a 10-second answering requirement will only make the shortage more acute. Community interpreting organizations (including CSD) have contacted Sorenson on many occasions to request that Sorenson not hire all the skilled interpreters in a city for VRS because there is a compelling need for community interpreters to serve the Deaf.

Simply put, the national agencies that have petitioned the FCC for VRS functional equivalency have done so without regard to the negative impact to the Deaf community of

⁷ Notice, 19 FCC Rcd at 12523.

removing the only available interpreting pool and using it for VRS. There is no short term solution to this shortage of qualified interpreters. Indeed, Sorenson is working with multiple schools to create VRS curriculum and internships to produce a greater number of qualified interpreters in the future for but it will take time for this and other initiatives to create a large enough pool of interpreters.

Sorenson also believes some individuals and organizations incorrectly pursue functionally equivalency across the board and disregard accessibility tradeoffs. The ADA was adopted “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁸ As the Commission explained in the *Notice*, in adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.⁹ The goal of providing access is not merely complementary to functional equivalence, but is, at a minimum, co-equal.¹⁰ Indeed, functional equivalence is a not a standard to be met in the laboratory. Rather, it is a real world test of whether the Deaf community can use VRS as a means of carrying out the Commission’s mandate to make communications services “available to all individuals in the United States” and “to increase the utility of the telephone system of the Nation[.]”¹¹ As the Commission noted in its *2003 TRS*

⁸ See 42 U.S.C. § 12101(b)(1).

⁹ See, e.g., *Notice*, 19 FCC Rcd at 12479 & n.17. “The ADA is aimed at eliminating discrimination against persons with disabilities in nearly all facets of society, including access to the telephone system.”

¹⁰ See 47 U.S.C. § 225(b)(1) (requiring the Commission to ensure that TRS is “available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States”).

¹¹ *Id.* Not coincidentally, this language parallels the language setting forth the purpose of the Communications Act “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . .” 47 U.S.C. § 151.

Order, “the enactment of Title IV was intended to further the universal service mandate of Section 1 of the Communications Act.”¹²

In this context, the Commission should be wary of focusing on equivalence at the expense of access. For instance, is it better if only 2% of the Deaf population can access VRS with short hold times or if 98% of the Deaf community can benefit by accessing VRS service with longer hold times? Consumers can make that choice, and if there are several competitive options, they will choose the option that best meets their needs. In Sorenson’s view, VRS should not be a service for only a select few deaf users who can access a functionally equivalent service. A new technology in its infancy, with rapid growth and tremendous acceptance should not be compared to other forms of text relay that face fewer obstacles to deployment in terms of infrastructure, endpoints, and labor pool.¹³

Other VRS providers have indicated that the decreased reimbursement rate prevents them from meeting the speed of answer waiver and that the VRS reimbursement rate would need to be increased to offset the inefficiency of the interpreters that would be needed to staff at a level to meet the requirement due to fluctuating call volumes. While Sorenson agrees that reimbursement rates would have to increase significantly to staff at a level to meet a stringent speed of answer requirement, Sorenson strongly disagrees with the position that the reimbursement rate is the only obstacle to being able to meet the speed of answer requirement. Rather, it is the pool of available qualified interpreters that makes the speed of answer requirement unattainable at this time.

¹² Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking*, 18 FCC Rcd 12379, 12381, n.3 (2003) (“2003 TRS Order”). The 2003 TRS Order goes on to note that the House, in adopting Section 225, found that “[t]he inability of over 26 million [hearing-impaired and speech-impaired] Americans to access fully the Nation’s telephone system poses a serious threat to the full attainment of the goal of universal service.” *Id.*, quoting H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 129 (1990) (House Report).

¹³ In addition to the difficulty of obtaining qualified interpreters, issues facing VRS providers include lack of bandwidth, H.323 aware firewalls, rapidly changing communication protocols and video codec standards.

Nor do we believe that Sorenson or any other VRS vendor should limit access to new customers so that only a small pool of existing customers can have functionally equivalent hold times to TRS. To effectively meet a speed of answer requirement, Sorenson would need to limit its effective outreach education program to limit the number of deaf and hard-of-hearing individuals who are aware of the existence of VRS to artificially keep call volume and hold times low.

If a speed of answer rule is implemented, it also will affect those interpreters who that are working for VRS providers. If a supervisor at a VRS Call center is aware that the hold times have exceeded the mandated limit, it is likely that pressure would be placed on interpreters to forgo needed breaks to help to reduce the hold time. This would result in a lower quality of interpreting experienced by the VRS users, job dissatisfaction of the interpreters, and ultimately in repetitive motion injuries for the interpreters; thus reducing the interpreter pool even further.

Sorenson views the January 2006 answer time waiver as too short a period to correct the interpreter labor shortage and satisfy VRS accessibility to those customers who desire the service. At minimum this waiver should be extended to January 2008, at which point the pool of available qualified interpreters can be reassessed. Given the growth of VRS and the lead time to train qualified interpreters, it is unlikely that any speed of answer standards can be promulgated before that time. The actual speed of answer metrics should then be determined with current data.

B. 24 x 7 Service

Sorenson does not support requiring VRS to be offered 24 hours 7 days a week, as either a mandatory or non mandatory TRS service. As described above, there is a limited number of qualified individuals available to serve as interpreters for VRS and mandating that all providers staff 24x7 would put additional strains on this already limited pool. Mandated staffing during

low call volume hours would result in longer overall hold times for most VRS users because fewer interpreters would be available during peak demand.

Market demand should drive the increase of hours so that the limited resource of interpreters is used efficiently. As the largest VRS provider, Sorenson recognizes this market demand and began offering 24x7 service on October 18, 2004. To force providers that only have a fraction of the user base of Sorenson to provide full time service will result in great inefficiency in the utilization of valuable interpreter resources.

V. VRS Rate Calculation Method

As described above, Sorenson continues to favor per-minute reimbursement. However, the method for calculating that reimbursement has significant flaws that should be addressed.

First, Sorenson does not view the existing FCC return on investment calculation for VRS as adequately explained or even as a relevant metric in determining time frame of the investment or type of expenses and costs allowed. For instance, is the investment made by a provider in creating videophone technology directly used to offer the non-waivered VRS services reimbursable for the period prior to being approved by the FCC as a qualified provider? If the allowable annual costs and expenses for offering VRS are to be used to determine the “investment,” then the ROI calculation more resembles a profit margin calculation. If not, then the metric is inappropriate for a labor- and development-intensive Internet based provider. Similarly, NECA has disallowed the inclusion of costs for taxes in developing the reimbursement rate yet concedes that a return on investment is an acceptable cost. This is contradictory since a “return” on investment inherently generates an income tax liability.¹⁴

Because of the vast inconsistencies in capital investment required between telephone-based relay and Internet-based relay (i.e. an incumbent exchange carrier company requires

¹⁴ In fact, traditional rate regulation includes an allowance for taxes.

significant capital investment while IP-based providers do not), an annual profit margin allowance for providing the VRS service itself rather than a return on investment allowance is a more equitable way to set the reimbursement rate. Using a profit margin would achieve a more consistent platform for developing a fair reimbursement rate for all providers. Depreciation on capital equipment investments would then be required to be appropriately apportioned to the VRS services provided. For this reason, Sorenson requests a fifteen percent profit margin to be granted after income taxes.

Sorenson does not include the equipment costs of providing free videophones to the deaf (as instructed by NECA) even though this equipment is by contract **not** “given away” to the deaf user, but technically remains owned by Sorenson. Sorenson also voluntarily removed any usage minimums on the equipment provided to the customer. However, other VRS vendors offer financial incentives in the form of reward points for each minute of VRS used that can be applied toward paying for the Internet connection of the VRS user.¹⁵ Sorenson seeks clarification that these cash reimbursements to customers (whether issued as check, used to pay for broadband service, or called donations) for usage are allowed.¹⁶ Furthermore, Sorenson requests clarification that financial incentives or donations are not recoverable costs in the same way that costs for free equipment or endpoints cannot be included in reimbursement requests. Indeed, it is difficult to understand how vendors offering financial incentives also can request higher reimbursement rates if they can earn enough funds to offer inducements that are outside the scope of providing the service.¹⁷

¹⁵ See the Brown Bags Reward program offered by Hands On Video Relay Service at <http://brown.hovrs.com/reward/signup.aspx?promocode=hovrs>

¹⁶ If this practice is permitted, it is unclear why usage minimums would not be permitted, and Sorenson seeks clarification.

¹⁷ See EMERGENCY PETITION FOR STAY and APPLICATION FOR REVIEW filed by Hands ON Hands On Video Relay Service on 07/20/2004.

VI. Two Year VRS Rate Period

Sorenson agrees with the two-year period rate proposal to allow for better planning and lowered risk for business expenditures that need commitment over a longer period than one year. The two-year period also will help create consistency over a longer term to offset the significant initial investment (and risk) made to enter the VRS business. Consistent per minute reimbursement rates will help providers to project revenues and operate with more stability resulting in a more functionally equivalent offering to the deaf and hard-of-hearing.

Today the historical fluctuations in reimbursement rates from year to year make it extremely difficult for business planning and investment into improvements for the consumer. If a provider cannot reasonably project revenues, it cannot make decisions about service improvements, hours of service or any other aspect of VRS without incurring significant risk.

VII. VRS as a Mandatory TRS Service

There is no question that, in the long term, VRS should be a mandatory service because no other relay service can match the functional equivalency of a real time conversation. Sorenson would support mandating VRS service now if the current waivers remained in place and the waiver for speed of answer is extended for a minimum of five years and the actual speed of answer metrics were not determined until the industry matured and data can be collected on what is feasible.

In addition, if the FCC mandates VRS service now, the only way that Sorenson can continue to offer VRS is if the Commission concurrently changes regulations to permanently reimburse both interstate and intrastate minutes for VRS. If VRS is made mandatory (with or without the waivers in place) and the Commission fails to first ensure that non-exchange providers are fully eligible for payments for both intrastate and interstate minutes then Sorenson

and other non-exchange carrier providers will not be able to remain in business to serve the needs of the Deaf community.

VIII. Abuse Issues of CAs by TRS Users

Sorenson is pleased that the Commission is proposing to address issues involving abuse of communications assistants (“CAs”). These issues have been difficult for providers to address without Commission guidance. As described below, Sorenson supports a policy that permits VRS interpreters to terminate calls that are abusive or obscene in nature, particularly when the abusive or obscene behavior is directed at the interpreter. Sorenson also believes the Commission should clarify its rules for calls that appear to involve criminal behavior and, specifically, to confirm that interpreter confidentiality cannot be breached unless the interpreter witnesses a crime.

A. Pornographic and Abusive Callers

The FCC should recognize that it is not sufficient to treat an interpreter who can see everything a deaf caller is doing as if the interpreter is the human equivalent of a dial tone. That view short-changes the role of the interpreter and ignores that there are large fundamental differences in seeing abusive or pornographic behavior directly versus typing or reading it. Although this behavior is infrequent, there have been cases of callers conducting calls in the nude and conducting lewd acts in front of Sorenson interpreters. It is unreasonable and is in violation of Sorenson company policy and our own code of ethics to force our interpreters to take these calls. Sorenson does not require interpreters to be used by VRS callers to watch them repeat obscene and lewd acts for the benefit of the caller to witness under the guise that it is a relay call.

Sorenson’s view is that the content of the call should be protected for the VRS users and the interpreter should remain transparent except when specific abusive comments or acts are

directed at the interpreter during the set-up, the duration of the call, or at the end of the call. In fact, calls where the intent of the deaf caller is to engage the interpreter over video versus conduct a conversation with a hearing party are not relay calls. Whether abusive, obscene or not, these calls should not have to be conducted because the relay service is provided to connect the deaf caller to a hearing caller and not to engage in actions (or reactions) or discussions with the interpreter.

Sorenson recommends that the FCC implement specific rules that make it acceptable behavior for TRS providers or interpreters to terminate calls that are abusive or obscene in nature and/or transfer the call to another interpreter in an effort to remove the interpreter that is being harassed or abused and still complete the call.

Further, Sorenson recommends that individual companies have some flexibility in defining a pornographic or lewd call. For the products that Sorenson has license control over (VP-100 videophone, EnVision SL software) the license policy for those free endpoints is already established and communicated to the deaf customer, and notification of reasonable policies should provide a sufficient basis for providers to cut off pornographic or abusive calls.

B. Illegal Calls

The Commission also should clarify the role of interpreters in calls involving illegal activity. The current rules require interpreters to maintain confidentiality and prohibit CAs from “disclosing the content of any relayed conversation regardless of content . . . even if to do so would be inconsistent with state or local law.”¹⁸ At the same time, the only meaningful exception to the requirement to relay call content verbatim is for calls made “for illegal

¹⁸ 47 C.F.R. § 64.604(a)(2)(i).

purposes.”¹⁹ These requirements raise questions concerning an interpreter’s role in calls that may involve illegal activities.

Sorenson submits that the Commission should draw a bright line for VRS calls. For VRS interpreters, the only time that a crime realistically can be confirmed is if the crime is occurring in front of the interpreter in the video portion of the call, for instance if a person is attacking another person with a weapon. Much as obscene or abusive behavior directed at the interpreter should not be treated as part of a VRS call, crimes that are committed in the view of the interpreter are not part of the communication protected from disclosure by the Commission’s rules. Like any other witness, the interpreter should be permitted, but not required, to report any crime to the appropriate law enforcement officials.²⁰

However, hearsay, innuendo and references to crimes should not be sufficient grounds for interpreters to breach confidentiality or not to provide VRS. When callers converse about a crime, the interpreter and VRS provider are in the same position as a telephone company, and essentially are deemed to have no knowledge of the content of the call. In the absence of a court order or similar binding mandate not to provide service to a customer, a VRS provider should not be put in the position of denying service based on information the rules forbid it from retaining. Further, requiring VRS providers to distinguish when calls involve criminal activity would entail myriad difficult interpretations of what callers are saying, as there often is considerable ambiguity in any conversation. The burden of trying to guess right every time is too great for VRS providers to bear.

¹⁹ 47 C.F.R. § 64.604(a)(2)(ii).

²⁰ It should be noted that interpreters may not know which law enforcement officials have appropriate jurisdiction, given that they may not know the location from which a call originates.

IX. Other VRS Issues**A. VRS CA to remain on the line for 10 minutes**

Sorenson agrees with the position presented in the *Notice* that there are circumstances when a VRS call can be more efficiently and effectively handled by a VRS interpreter other than the one who initially handles the call, and therefore that the 10 minute rule should not apply in this context.²¹ Although Sorenson uses highly trained certified interpreters, specific cases arise where the deaf user would be better served by another interpreter. In addition to the benefit to the VRS users, switching interpreters in situations where there are communication barriers results in a more effective use of FCC funds since the calls can be handled in less time by a more appropriate interpreter.

B. Permitting Interpreters to Ask Questions During Call Set-up

VRS does present different challenges for interpreters who have to deal with the complexities of sign language; including that one sign can mean different things depending on the context. Sorenson recommends that the Commission expressly permit VRS interpreters to ask the caller questions about the nature of the call during call set-up so that the interpreter has a basic understanding of the context of the call to better relay the call. If the caller declines to answer setup questions, the call should still be immediately processed.

C. Certification and Oversight of VRS Providers

It is in the best interest of the consumer for there to be multiple certified VRS providers. Requiring individual providers to become certified by individual states would be a costly and slow process. As described above, most states are inclined to only approve one provider. This would result in fewer choices for the consumer. To encourage efficiency and open competition

²¹ *Notice*, 19 FCC Red at 12569.

of qualified VRS providers, the Commission should provide certification and oversight of VRS providers and not individual states.

A federal certification process should not place additional burdens on current VRS providers that already are state certified. Existing VRS providers that have demonstrated their competency and viability as VRS providers should be “grandfathered” into the FCC certification program. To remove an existing provider would have negative impacts on the Deaf community as it would be difficult for the remaining providers to scale to absorb the VRS minutes that the eliminated VRS provider(s) serviced, resulting in decreased service levels for the overall community. For example, if Sorenson, the provider of over half of the VRS minutes billed in 2004, were to be removed as a provider, the remaining providers would have to instantly scale to over twice the number of minutes they currently provide, which is not practical or achievable.

Sorenson believes that one of the most important features of any federal certification program should be adequate safeguards to ensure that only financially sound prospective providers be granted federal certification. The short and long-term purpose of federal certification should be to expand the pool of *bona fide* VRS providers, not to create opportunities for unprepared or unscrupulous prospective providers to exploit the Interstate TRS Fund.

Providing VRS services is very expensive, requiring significant capital to fund start-up and ongoing operations. As the Commission is aware, early providers of TRS services often were unaware of and unprepared for the costs of operating their services, and the results sometimes were disastrous. Unprepared and unfunded providers simply cannot offer the level and consistency of performance to which the Deaf community is entitled. Before granting federal certification, the Commission should ensure that prospective providers are both aware of these expenses and capable of handling them. If a provider is certified without adequate

financial support, the risks to both VRS users and the Interstate TRS Fund are significant. Financially unstable providers could drain the Interstate TRS Fund without expanding the availability of TRS services. This result would severely disserve the public interest. Indeed, Congress has required that actual services be made as widely available as possible; the certification of financially unqualified providers would defeat, not advance this goal.

For new providers to become certified as VRS providers, the FCC should require:

- A showing that the new provider can be a long-term provider. Many state public service commissions require a financial report as well as the ability to demonstrate that they have cash or other liquid assets of over \$20 million. Sorenson recommends that detailed financial statements (including balance sheets and income and cash flow statements) and demonstrated availability of liquid capital be required by the FCC for certification.
- A compliance report should be submitted to the FCC, indicating the provider's compliance with the current regulations and identifying technical issues preventing the new entrant from accomplishing waived items.
- A three month trial-period of demonstrating that the provider can provide the VRS service in accordance with the current FCC regulations. During the trial period, all complaints should be submitted on a monthly basis for FCC monitoring to determine if the level of service is at acceptable levels.
- During the trial period, a demonstration of the ability to comply with monthly FCC/NECA billing reports of minutes of translation should be submitted. NECA should conduct a detailed audit of the submitted data to ensure its accuracy and integrity. The provider should be required to demonstrate how the information in the detailed audit report is calculated to the satisfaction of the auditor.
- A list of facilities and location of services to be used in providing VRS service.
- Names and biographical description of officers of the organization.

For ongoing oversight of VRS providers the FCC should require:

- Submission of quarterly and annual detailed complaint logs.
- Annual waiver status report indicating progress being made toward achieving the waived requirement.
- Detailed call audit reports on an annual basis for all calls that are submitted for payment. The detailed audit report should cover a duration of time specified by

NECA/FCC up to the entire period since the last detailed audit report. The detailed audit report should include the items described previously in this document.

X. TRS Advisory Council

The complexity of TRS has increased over recent years and the representation of two TRS providers to represent traditional TTY and the relatively new non-mandated VRS and IP Relay offerings is not sufficient. Sorenson recommends that the composition of the TRS advisory council be changed to have total of four members representing each subset of TRS (TTY providers, IP Relay providers, VRS providers, and speech-to speech providers).

The current practice of self-nomination is not a practical method of selection. For the TRS providers, representation should be granted to the organization that provided the most minutes for the particular segment of TRS during the twelve months prior to the appointment period. Consumers naturally choose the provider that is best meeting their needs and by allowing the leading provider of each subset of TRS to be on the council, the advice that will be given to the council will be reflective of the solution most widely selected by the consumer.

XI. Conclusion

For all these reasons, the Commission should adopt rules that are consistent with these comments.

SORENSON MEDIA, INC.

By: _____ / s /

Pat Nola
Chief Operating Officer
4393 South Riverboat Road
Suite 300
Salt Lake City, Utah 84123

Of Counsel:

J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 776-2000

October 18, 2004

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 18th day of October, 2004, copies of the foregoing Comments of Sorenson Media, Inc. were served by hand-delivery to the following:

Marlene K. Dortch, Esquire (via electronic filing)
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Thomas E. Chandler, Chief
Disability Rights Office
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C463
Washington, DC 20554

K. Dane Snowden
Bureau Chief
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C758
Washington, DC 20554

_____/ s /_____
Vicki Lynne Lyttle